

Utah Department of Commerce

Division of Real Estate

A publication for Utah's real estate, appraisal, and mortgage professionals.

NEWS

Gary R. Herbert, Governor

Francine A. Giani, Executive Director

Jonathan Stewart, Division Director

SECOND QUARTER 2013

DIRECTOR'S MESSAGE

What Can I Do for the Division?



Jonathan Stewart

Several times in the last year, division staff has been asked: "What can we, as licensees, do for the Division?" I have identified five things licensees can do to assist the division in fulfilling their mission, which is to "protect the public and promote responsible business practices through education, licensure, and regulation of real estate, mortgage, and appraisal professionals." The five ways I believe licensees can assist the division, are:

- Attend Commission/Board meetings
- Read the division newsletter
- Comment on newly proposed administrative rules
- Submit complaints
- Submit questions

Attend Commission/Board Meetings

Attending commission/board meetings is one of the best ways a licensee can be more involved in helping and supporting the division. Monthly, the division and commissioners/board members discuss industry topics that affect your career in real estate, mortgage, or appraisal. By attending these monthly meetings you will understand the issues being discussed, be able to give feedback to the commission/board and division, and in turn, shape the future of your industry. If you are unable to attend our monthly commission or board meetings, [Senate Bill 77](#), Availability of Government Information, now requires the division to post to the [Utah Public Notice Website](#) pending minutes within 30 days of the meeting, approved minutes within three

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DIRECTOR'S MESSAGE

What Can I Do for the Division?



days of the meeting, public materials within three days of the meeting, and a recording or link to the recording within three days of the meeting. This allows licensees and members of the public to review all materials and topics discussed in commission and board meetings, even if you are unable to attend.

Read Division Newsletter

The division newsletter has the most current information the division has to share with licensees. The newsletter covers current industry issues, statutory or administrative rule changes, and upcoming changes that will affect licensees. Take the time to read the newsletter, not just the disciplinary section. Brokers can use the newsletter to have a staff meeting and discuss current trends and issues. The division spends a lot of time putting the newsletter together for your benefit; we hope that you will take the time to read it and stay up to date on changes and current issues.

Comment on Newly Proposed Administrative Rules

The division, with approval of the commissions and board, make changes to administrative rules. These rule changes are talked about in commission and board meetings. Administrative rule changes are also written about in the quarterly newsletters. Each time an administrative rule changes, we are required to have a 30-day public comment period. We rarely receive public comments on rule changes. We try very hard to discuss all the unanticipated and unintended consequences of rule changes before posting them for public comment. We understand that there are things that are often times overlooked. One of the ways you can help the Division and your industry is to read the proposed rule changes and submit public comments to the division. Comments can be in support of the rule changes, or they can be to offer suggestions or concerns. If you know administrative rule changes are being discussed, take the time to read the changes and offer public comment.

Submit Complaints

As mentioned earlier, part of the mission statement of the division is to protect the public. One way the division protects the public is through the investigation of complaints. We hear a lot about possible violations of our statutes and administrative rules, but we don't always see the complaint filed with the division for those violations. If you see violations, we would ask that you strongly consider filing a complaint with the division.

Submit Questions

Sometime last year, the division created a new email address for licensees to submit questions to the division that would be answered anonymously in the quarterly newsletter. If you have a question, and would like a response from the division, consider submitting the question to DRENewsletter@utah.gov. There is a good chance that other licensees have the same or similar question, and all could benefit from having it asked and answered in the newsletter. We look forward to continuing to build a strong and mutually supportive relationship with our licensees.

Best Practices for Appraisers

By: Theron Case, Appraisal Investigator

Using the Correct Form: 1004 Verses General Purpose Forms

The Division has noticed lately that some appraisers are still unaware there are forms available which have similar layouts to the FNMA 1004 form, but have certifications without any mortgage references and have areas for additional certification and scope of work to be added as needed by the appraiser. These are listed as general purpose forms or GP forms in various appraisal software programs.

On the first page of the 1004, under “appraisal type,” there is a box for an appraiser to check whether the appraisal is for a “purchase,” “refinance,” or “other.” There is a blank line for the appraiser to further explain the use of “other.”

By having the option of “other” seems to encourage appraisers to use the 1004 for “other” non-mortgage intended uses. The 1004 was designed for mortgage purposes. The certifications, scope of work, intended use, and intended users all reflect the form is to be used for mortgage finance transactions.

The main issue with using the 1004 is the pre-written (unchangeable) certification referencing the intended use to be for a mortgage finance transaction and the additional scope of work required for a mortgage transaction as stated in the certification pages.

The 1004 form has a specific scope of work required for mortgage transactions that may or may not be required on a non-mortgage transaction. It also has specific language stating “modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted.”

When an appraisal is performed where the intended use is for valuation of property involved in a divorce or any other use, and the party which disagrees with your value reads the fine print of a report that states the intended use is for a mortgage transaction, it raises questions about the credibility of the report.

A best practice is to use the correct form to report the appraisal results. Most often your client will not know which form or format is the best, so the decision is left up to the appraiser’s discretion. This may include using a general purpose form in lieu of a 1004.

There are a number of best practice areas in appraising and many sources available to assist you as an appraiser. This is one area I have noted. With some slight adjustments in your practice, you may save yourself from having a complaint filed with the Division by an unhappy customer/client.

The Division of Real Estate provides four newsletters a year and covers issues involving Real Estate, Mortgage, Appraising, and AMCs. There is not enough time or space to effectively detail all the best practices for appraisers, but we will try to start doing one in each newsletter edition. In addition to continuing education classes, I would recommend reviewing other states newsletters online, as they often have additional best practice articles and ideas to assist you as an appraiser.



Delinquent Appraisal Management Companies Fail to Meet Bonding Requirement



The deadline for all appraisal management companies (AMCs) registered with the Division to secure a surety bond was January 1, 2013. Administrative rule R162-2e-201 (1) requires the (AMC) surety bond to be in the amount of \$25,000 **and provides, throughout the full period of registration,** for the Division to make a claim: (A) on behalf of an appraiser; and (B) for unpaid fees as awarded to the appraiser in a final judgment entered by a court of competent jurisdiction;...”

As of the printing of this newsletter, the Division has 155 registered AMCs. As noted above, each of the registered AMCs has been required to have such a bond in place at minimum, since the first of this year.

Unfortunately 72 AMCs fail to comply with the bonding requirement described in the first paragraph of this article. On June 06, 2013, the Division sent letters to each of the 72 delinquent AMCs notifying them of the fact that their companies were out of compliance and that the Division would automatically suspend their registrations should they not come into compliance by July 08, 2013.

To date, the Division has only received compliant surety bonds from ten additional AMCs. On July 08, 2013, the remaining 62 AMCs will be receiving notifications of automatic suspension of the AMCs registration until such time as the AMC provides evidence to the Division that it is in compliance with the surety bond requirement. (R162-2e-201 (4)(b)).

Dennis Yarrington MAI, SRA – President, Utah Association of Appraisers (UAA):

Fellow Appraisers –

With summer finally upon us, things are heating up not only on the grill but in our industry as well. In April the UAA held our annual Legislative Update Seminar. Utah Legislators Jack Draxler and Gage Froerer were joined by Bruce Johnson of the Utah Tax Commission, Dan Brammer of the Utah Appraisal Board, and appraiser lobbyists – Chris Kyler and Mike Ostermiller, for a panel discussion of legislation presented and passed in the 2012-2013 legislative session that impacts Utah homeowners and the appraising profession. The topic that drew the most interest was the Hearing Officer requirements and training. The goal of this legislation was to ensure tax appeal Hearing Officers were qualified and competent. It appears that priority will be given to appraisers to serve in this position. The UAA will be assisting the Tax Commission in developing the required Hearing Officer Training Course.

The UAA Summer Symposium is right around the corner in August (14th) – put it on your calendar now! This half-day event will highlight recent changes and trends in the economic climate affecting commercial and residential property values and provides 3 hours of continuing education. The keynote speaker will be Jonathan Francom, Senior Director of Corporate Real Estate and Facilities Operations of the Adobe Corporation. As

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in the past, the symposium will be held at the Little America Hotel in SLC (8:00am-11:30am). More details and registration information is available at the UAA website: www.UtahAssociationOfAppraisers.com.

The UAA board is considering sponsorship of a residential only symposium around April, similar to the Summer Symposium, but focusing on residential issues. We would like feedback from appraisers on whether they would be interested in and support such an undertaking. Please send your feedback to DYarrington@daviscountyutah.gov

Property ownership is a very important right. It is part of our job to help protect it. I would like to thank all appraisers for their service and dedication to the appraising profession.

Regards,
Dennis

Good-Bye and Thank You to H. Thayne Houston



We have been very fortunate to have Thayne Houston serve on the Real Estate Commission from 2009 through 2013. He served as Chair of the commission from 2012 through 2013 and Vice Chair from 2011 through 2012.

Thayne is the Principal Broker for ERA Brokers Consolidated which he joined early in his career in 1984. He became a partner with the firm in 1986 where he has grown the company from 20 sales associates in 2 office locations to over 100 associates in 6 office locations. Besides Utah, he holds broker licenses in Nevada, Arizona, and Idaho. He is also a partner in NAI

Utah South Commercial Real Estate.

Thayne has expressed in the past that he enjoys the opportunities and the challenges that the real estate industry presents each day and feels it is important to serve and give back to this industry. He has been through the highs and lows of the market and has helped other professionals like himself weather the storms.

We appreciate the guidance and direction that Thayne has provided the real estate industry during his years of service and wish him continued success in his future endeavors.



Kagie's Korner

A New Trend



A new trend or practice occurring among real estate agents has recently come to the Division's attention. The practice of using a buyer's repair list. This new procedure is a potential concern to the Division, as it could be in violation of a few statutes and administrative rules, and ultimately could lead to disciplinary action against licensees. The following is an illustration of the practice.

A buyer, after their home inspection is completed, reviews the inspection report and has decided to ask the seller to make repairs. The buyers discuss the issues with their agent, and the buyer's agent gives an oral report to the listing agent. At this point, the listing agent tells the buyer's agent that the seller does not want the repairs to be put on an addendum to the contract.

The reason for not doing so: the buyer's lender may require the repairs to be completed before closing, but the seller does not have the funds to pay for the repairs at that point. In lieu of an addendum, the listing agent and the buyer's agent agree to draft a letter together, wherein the seller agrees to make the repairs after closing. This letter regarding repairs, of course, is not disclosed to the lender, and as previously mentioned, the repairs are not part of the contract. In essence, the lender is unaware of the repairs needed, and the sale proceeds "without any lender hindrance or interference."

While this may seem like a great idea at the time, by using this document and not disclosing all of the true terms and conditions of the transaction to the lender, the licensees could have violated a number of statutes and administrative rules related to the following:

- Misrepresentation
- Dishonest dealings
- Incompetence by not safeguarding the public
- Jeopardizing public safety
- Using a false device
- Using documents the licensee knows is not reflective of the true terms of the transaction
- Fiduciary duty to their clients
- Using a double contract
- Participating in a transaction where a buyer enters into an agreement not disclosed to the lender which, if disclosed, might have a material effect on the granting of a loan.

Licensees should not enter, or allow their clients to enter into any agreement that does not reflect the true terms and conditions of the transaction. Disclosure is the key. Disclosure not only protects the licensees involved, but also the clients they represent.

Mortgage Call Reports Statements of Financial Conditions Reminders

Mortgage Call Reports And Statements of Financial Conditions Reminders



The March 2013 Division newsletter provided important information about Mortgage Call Reporting requirements and the requirement to file an Annual Statement of Financial Conditions report. Please refer to that [article](#) as a reminder of these requirements and to aid you in completing these reports.

We would like to remind all mortgage entities licensed with the Division that call reporting deficiencies **MUST** be removed **BEFORE** an entity license will be allowed to be renewed for a 2014 mortgage entity license.

Even inactive entities or entities that desire to surrender their mortgage entity license must submit a final call report for the quarter in which the entity license inactivated or was surrendered. Call reports must be kept current.

In addition, the failure to file a timely quarterly call report and annual statement of financial conditions report are violations of Utah statute.

Mortgage entities please initiate policies and procedures to ensure the timely filing of the mortgage call report and the annual statement of conditions report.

Broker This!: Record Retention and Trust Accounts

By Jeff Nielsen, Chief Investigator

The Division of Real Estate has recently made some big changes in the rules for our real estate licensees. Most of these changes have been made regarding property management transactions and what unlicensed assistants can do in real estate and property management transactions. Changes were also made to two other areas: record retention and trust accounts.

Regarding the record retention rules, you will notice the rules have been removed from the rule regarding Principal Brokers (R162-2f-401c), and have been placed in a



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new section regarding records (R162-2f-401k). Over the last few months, the Division has received questions regarding the record retention rules, and whether the records can be maintained electronically. I would like to highlight that the Division's rule now answers these questions. Under subsection (2), the new rule addresses record retention related to physical files and electronic files. Maintaining records either physically or electronically is acceptable by the Division, as long as the rules are followed. According to the new electronic records portion of the rule, I should also point out that licensees will be required to ensure the records comply with Title 46 Chapter 4 of the Utah Code, which is the Utah Uniform Electronic Transactions Act.

While on the subject of electronic records, I would like to offer a suggestion on best practice regarding maintaining electronic records. Even though the rule does not specifically require a licensee to maintain some sort of back-up copy of the records, I would highly suggest licensees do so. Those back up records could be on some sort of media, external hard drive, or network.

If a back-up record is not specifically required, why suggest it? Remember the rest of the record retention rule. Real estate brokers must keep records for at least three calendar years following the year in which an offer is rejected or the transaction closes/fails. In the event the Division requests files from a broker and files cannot be provided during the retention period, there could be violations for not maintaining these records for the proper period of time. The Division staff has heard various reasons for not having records, including the files becoming corrupted and computer crashes. This is not seen as a valid reason to not maintain the records for the appropriate period of time.

Now let's go to the trust account rule changes. There have been some significant changes in this area. In the past, there was only one rule for trust accounts (R162-2f-403). Now, the rule has been broken into three sections: general trust account provisions (R162-2f-403a), real estate trust accounts (R162-2f-403b), and property management trust accounts (R162-2f-403c). As is implied by the name, the first section on general provisions applies to all trust accounts. Then, depending on whether the trust account is for real estate transactions or property management, there are new specialized rules for each.

I will point out that in the real estate trust account rules (R162-2f-403b), there is a provision that if a broker engages in property management on behalf of seven or more clients/projects, a property management trust account must be created separate from the real estate trust account. Most of the provisions should not be news, but I will point out a couple of things specifically.

First, as required by rule, brokers must reconcile their trust accounts at least monthly. We have had numerous problems in the past, and currently, that could have been prevented had this occurred. Remember, it is now required.

Second, the property management portion (R162-2f-403c) specifically states the property management trust accounts shall be used to secure tenant security deposits, rents, and reserve funds on behalf of the property owner. I highlight this because I have been asked about rents. If rents are to be deposited in an account, it needs to go into a trust account.

Third, there is one significant difference between the real estate and property management rules. According to rule, real estate trust accounts cannot hold more than \$500 of the broker's funds, otherwise it is a violation of statute. This is not the case with property management trust accounts. According to rule, broker funds are not capped at the amount deposited into the trust account, but must comply by maintaining records to clearly identify the total amount belonging to the broker, or perform a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the broker.

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Finally, the last item I want to address is in regards to property management trust accounts. The new rule does not allow a broker to “borrow” funds from one client for another client’s benefit, even on a temporary basis. The Division has been told of this occurring in the past, but with the new rule in place, this would be a violation.-

-Reprinted from March 2013 Newsletter-

Mortgage Licensees Have Until March 31, 2014 To Take “Abbreviated” NMLS Uniform State Test (UST)



The NMLS has completed development of a Uniform State Test (UST). The UST is proposed by the NMLS as a quasi-universal state test that many states are selecting to serve as their NMLS state test rather than having a unique state test. The state of Utah has **not** adopted the UST to substitute for their Utah licensing test. The UST is designed to become a new section or component of the NMLS National Test. This new test section will include 25 questions which will bring the length of the National exam to 125 questions. **Until March 31, 2014, any Utah mortgage licensee desiring to be licensed in a state outside of Utah that adopts the UST may take an “abbreviated” 25 question UST test.** Your passage of this shortened test, will streamline the process of you becoming licensed in any jurisdiction that adopts the UST.

Approximately half of all mortgage licensing jurisdictions (state licensing agencies) are in the process of adopting the Uniform State Test as a replacement for their states individual state licensing tests.

The new UST subject matter will test applicants on their knowledge of information contained in the SAFE Act and Model State Law (MSL) that was recommended for adoption by the NMLS to state licensing agencies but was never adopted by The Utah state legislature. The UST content does not combine content from multiple state tests, and none of the UST questions will involve state specific content. It is also very likely that some of the questions on the UST may be in direct conflict with one or more Utah state statutes.

Implementation of how the NMLS Utah state test will be administered with the implementation of the UST:

National Test With UST – (For initial licensees in Utah) - This test component is now available for enrollment for eligible candidates. It will replace the current National Test Component.

Who is eligible to enroll? – All candidates who are seeking state licensure and have not previously passed the National Test Component.

Stand-alone UST – (For currently licensed mortgage licensees in Utah, that want to or who may want to become licensed in a jurisdiction that adopts the use of the UST) - This test component is now available for enrollment for eligible candidates. Eligible candidates may enroll in the test for a period of one year ending March 31, 2014. As of April 1, 2014, the stand-alone UST will no longer be available for enrollment. Candidates who enroll to take the test before April 1, 2014, will have the usual 180-day window to schedule and take the test.

Who is eligible to enroll? – All candidates who have passed the National Test and who are seeking (or who may later seek) licensure in a state which has adopted or may adopt the UST.

State Tests – These test components will be available for enrollment for all eligible candidates as long as any state requires passage of its state specific test (which Utah does). Due to the relatively small number of questions included in the new

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UST content section, the UST will always be scored as part of the National Test Component. The UST content will be part of the current national test. For candidates to receive a passing score of 75% they will need to get at least 87 questions correct out of the 115 scored questions. For candidates who take the stand-alone version of the exam (existing Utah licensees), they will take a 25-question test. However, the 25 questions will then be combined with the score from the candidate's official results on the National Test Component and the two scores will be combined to produce the candidate's National Exam Score.

The CFPB has now authorized the use of the Uniform State Exam by those state agencies desiring use of a uniform test. Existing Utah mortgage licensees (lending managers and mortgage loan originators) may want to voluntarily take the abbreviated 25 question UST before March 31, 2014 if they anticipate wanting to be licensed in any state that adopts the UST.

Rule Developments Second Quarter 2013



To view and comment on any of the proposed rules, please visit the Utah State Bulletin at <http://www.rules.utah.gov/publicat/bulletin.htm>

Appraisal Management

A proposed rule was published in the Utah State Bulletin on June 15, 2013 with the public comment period running through July 15, 2013. The amendment clarifies that it is unprofessional conduct for an AMC to use its own employee appraiser if the client has engaged it to act as an AMC. Utah law defines an AMC as a third-party broker between an appraiser and a client. If an entity that is registered as an AMC seeks to use an employee appraiser to complete an assignment, it must first disclose to the client that it is acting in

the capacity of an appraiser firm rather than as an AMC. This change is intended to clarify the role of an AMC in each transaction. The rule amendment further defines who is considered an employee of the AMC.

Appraisal

On June 26, 2013, the Appraisal Board approved a proposed amendment that would allow a licensee to request that his or her continuing education requirements for renewal be deferred due to active military service or due to hardship under a state- or federally-declared natural disaster. It is anticipated that the amendment will be published for comment in the Utah State Bulletin on August 1, 2013, with the comment period running through September 3, 2013.

Mortgage

A proposed rule amendment was published in the Utah State Bulletin on June 15, 2013, with the public comment period running through July 15, 2013. The amendment proposes the following changes:

1. Remove the term "principal" from sections that refer to a "principal lending manager" within the context of the National Mortgage Licensing System (NMLS), as NMLS recognizes only the "lending manger" license. (The Division of Real Estate will continue to recognize distinctions among the principal lending manager, branch lending manager, and associate lending manager license designations.)
2. Modify the school certification process by requiring the school to provide an email address for the school,

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its director, and owner; and by requiring the school to state the type of instruction method used in its courses

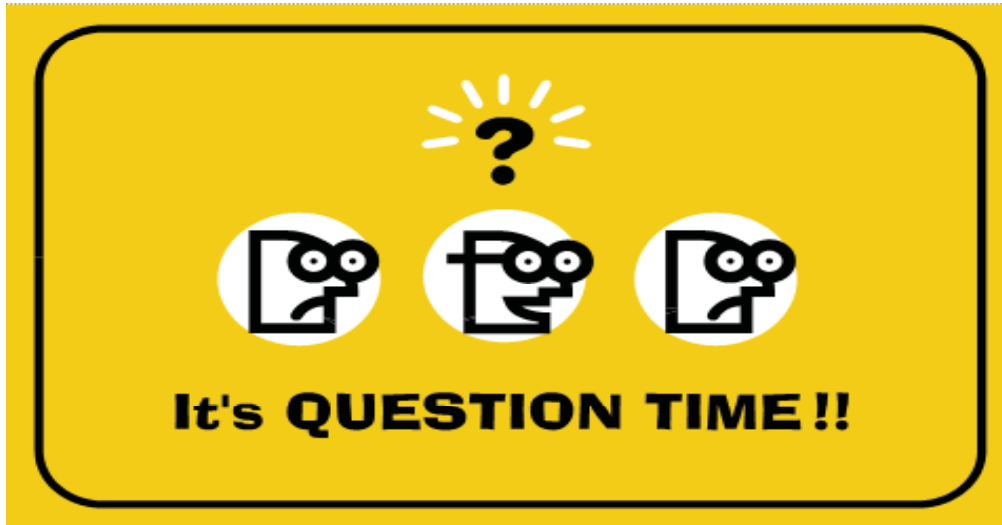
3. Remove the existing initial certification requirements that obligate a school to list the offered courses, provide a schedule of the courses, and prove that the division certified each course.
4. Require a school seeking to renew its certification to list proposed courses, a proposed schedule, and supply the all other information as required for course certification.
5. For course certification, require that the school provide a copy of each quiz with an answer key.
6. Clarify that prelicensing courses expire when the school certification expires, but are automatically renewed at the same time as the school certification.
7. Require licensees to annually complete a Division-approved course on Utah law, beginning in the 2014 renewal period.
8. Impose new affirmative duties on schools to provide a course completion certificate to students and ensure that the course materials are current.

Real Estate

The Real Estate education rules were amended on June 21, 2013 as follows:

1. The instructional methods that are acceptable for education credit are specified and defined.
2. The information a real estate school must provide to the Division in order to obtain a certification is clarified.
3. Real estate schools are required to notify students of the possibility of obtaining an education waiver from the Division.
4. requirements for course certification are updated to require a description of the course content regarding current statutes and rules, as well as a description of the school's student grievance process.
5. The requirement of preparing, administering, and submitting to the Division student evaluations of each course taught is removed.





Do You Have A Question Or A Suggestion For The Division?

Do you have a question you have been wanting to ask an investigator but have not had the time to call? Do you have questions about your license? We want to hear about your ideas and suggestions. All questions and suggestions will be anonymous. Selected questions will be answered in the next newsletter.

Submit questions to: DREnewsletter@utah.gov

THIRD QUARTER LICENSING & DISCIPLINARY ACTIONS



Please note that there are 30 days after the order date for a licensee or an applicant to file a request

for agency review of the order, and that there are 30 days after the issuance of an order on review for a licensee or an applicant to file a petition for judicial review. Some of the orders listed may be within those appeal periods.

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Utah Division of Real Estate

Please note that Utah law allows 30 days for appeal of an order. Some of the actions below might be subject to this appeal right or currently under appeal.

APPRAISAL

DRAXLER, JACK R., certified general appraiser, North Logan, Utah. In an April 24, 2013 stipulation and order licensee, without admitting or denying the allegations in the stipulation and order, agreed to pay a \$1,500 civil penalty to resolve allegations of violating: USPAP standard rule 1-1(b) (2006), USPAP standard rule 2-2(b)(vii) (2006), Utah Administrative Code R162-106-7 (2006)) now codified as Utah Administrative Code R162-2g-502a(1)(f), and Utah Administrative Code R162-106-1 (2006) now codified as Utah Administrative Code R162-2g-502a(1)(b)(i). Case number AP-12-60744.

MORTGAGE

ADENIYI-BADA, BANDELE ISHOLA, mortgage loan originator, Lindon, Utah. In a May 17, 2013 order his license was granted on probation for unsatisfied state and federal tax liens. Case number MG-13-65197.

BOSH, GREGORY DARELL, mortgage loan originator, West Jordan, Utah. In a May 7, 2013 order his license was granted on probation for criminal history. Case number MG-13-65014.

DALLEY, MATTHEW STEPHEN, mortgage loan originator, Herriman, Utah. In a May 17, 2013 order his license was granted on probation for unsatisfied state tax liens, federal tax liens, and other civil judgments. Case number MG-13-65200.

GIRALDO, ELENA, South Jordan, Utah. In an April 15, 2013 order her previous license revocation was converted to a suspension under Utah Code § 61-2c-402(4). Case number MG-13-64609.

JONES, ROBERT NORMAN, mortgage loan originator, Spanish Fork, Utah. In an April 12, 2013 order was granted a license on probation for unsatisfied civil judgments. Case number MG-13-64578.

KASPARIAN, MELISSA, mortgage loan originator, Taylorsville, Utah. In an April 17, 2013 order following a hearing her license was placed on probation for a period of two years and ordered to pay a civil penalty of \$10,000 for violating Utah Code § 61-2c-301(1)(d) and Utah Code § 61-2c-301(1)(l). Case number MG-12-60534.

KISHABA, JASON, Lake Forest, California. In an April 3, 2013 stipulation and order he agreed to pay a \$2,000 civil penalty for unlicensed activity. Case number MG-12-63081.

NEWMAN, GREGORY P., Farmington, Utah. In a May 28, 2013 order his previous license revocation was converted to a suspension under Utah Code § 61-2c-402(4). Case number MG-13-65302.

O'MALLEY, SHAWN M., mortgage loan originator, Layton, Utah. In an April 10, 2013 order he was granted a license on probation for recent criminal history. Case number MG-13-64556.

REESE, T. BLAKE, lending manager, Salt Lake City, Utah. On April 8, 2016, the Third District Court, Salt Lake County, in *Reese v. Dept. Of Commerce et al*, Case Number 140902532, entered its order (a) that Mr. Reese violated Utah Code Ann. § 61-2c-301(1)(d)(iii) (2007) with respect to the loan application of A.B. Submitted on or about April 12, 2007 to Security National Mortgage; (b) suspending Mr. Reese's Utah license as a lending manager for the period beginning on April 17, 2013 and ending on April 8, 2016; and (c) ordering Mr. Reese to pay a civil penalty in the amount of \$2,500.00 and complete thirty-five hours of continuing education.

SALERNO, MELANIE L., mortgage loan originator applicant, North Ogden, Utah. In a June 14, 2013 order her application was denied for recent criminal history. Case number RE-13-65645.

REAL ESTATE

ALLEN, RHETT D., sales agent, Draper, Utah. In an April 9, 2013 order his license was granted, immediately suspended, and then placed on probation for recent criminal history. Case number RE-13-64508.

BRADSHAW, STEVEN L, sales agent, Draper, Utah. In a May 20, 2013 order his license was granted on probation for criminal history and unsatisfied civil judgments. Case Number RE-13-65234.

CHANDLER, HANNO L., sales agent, Salt Lake City, Utah. In an April 17, 2013 order his license was granted, immediately suspended for a period of two months, and then placed on probation for criminal history. Case number RE-13-64630.

CHRISTENSEN, LYNN A., sales agent, West Jordan, Utah. In an April 18, 2013 order following a hearing

CHRISTENSEN, LYNN A., principal broker applicant, West Jordan, Utah. In a May 1, 2013 order his application for licensure as a principal broker was denied because his sales agent license is currently on probation. Case number RE-13-64879.

COX, SCOTT J., sales agent, Spanish Fork, Utah. In a May 29, 2013 order his license was granted on probation for criminal history. Case Number RE-13-65389.

CROWE, IAN T., sales agent, St. George, Utah. In a May 28, 2013 order his license suspension was lifted and placed on probation after complying with the terms of an April 21, 2010 order. Case number RE-13-63632.

DO, DAHN HUY, sales agent, West Valley City, Utah. In a May 21, 2013 order his license was granted on probation for recent criminal history. Case number RE-13-65252.

ENGLISH, MARK, sales agent, St. George, Utah. In an April 4, 2013 order his license was granted, immediately suspended for one month, and then placed on probation for previous DOPL licensing sanctions and failing to disclose a prior professional licensing denial in the licensing application. Case number RE-13-64467.

FAJARDO, BRANDON, sales agent, Taylorsville, Utah. In a May 7, 2013 order his license was granted on probation for recent criminal history. Case number RE-13-65006.

FAUSETT, MICHAEL, sales agent, Taylorsville, Utah. In a May 8, 2013 stipulation and order he agreed to pay a \$1,000 civil penalty for failing to disclose a criminal history in the licensing application. Case number RE-13-64889.

FLETCHER, ASHLEY, sales agent, Draper, Utah. In an April 22, 2013 order she was granted a license that was immediately suspended for a one month period for failing to disclose a recent criminal history in the licensing application. Case number RE-13-64698.

GRIFFITH, DOUGLAS STEWART, sales agent, Bountiful, Utah. In a May 10, 2013 order following a hearing he was granted a license on probation and ordered to pay a \$1,000 civil penalty for failing to disclose criminal history in the licensing application. Case Number RE-13-64064.

GUNDERSON, TIGH, sales agent, Lehi, Utah. In an April 19, 2013 order following a hearing he was granted a license on probation for a previous disciplinary history with his mortgage loan originator license. Case number RE-13-63864.

HARRIS, KRISTINE, sales agent, Logan, Utah. In an April 23, 2013 order she was granted a license that was immediately suspended for a period of fifteen days for failing to disclose criminal history in the licensing application. Case number RE-13-64737.

HOBBS, ROBERT C., sales agent applicant, West Valley City, Utah. In a June 10, 2013 order his license was denied for criminal history. Case number RE-13-65528.

HODSON, MARK, sales agent, Sandy, Utah. In an April 17, 2013 stipulation and order he agreed to pay a \$500 civil penalty for failing to disclose criminal history in the licensing application. Case number RE-13-64547.

HORN, ROBERT, sales agent, Farr West, Utah. In an April 23, 2013 order he was granted a license that was immediately suspended for a period of fifteen days for failing to disclose criminal history in the licensing application. Case number RE-13-64723.

IRWIN, DAVID, principal broker, Park City, Utah. In an April 4, 2013 order was granted a license, immediately suspended for a period of two months, and then placed on probation for recent criminal history. Case number RE-13-64462.

JACKSON, BRIAN N., sales agent, Clearfield, Utah. In a May 20, 2013 order his license was granted on probation for criminal history. Case number RE-13-65220.

JOHNSON, JONATHAN, sales agent, South Jordan, Utah. In an April 24, 2013 order his license was granted on probation for prior disciplinary history with his Utah and Georgia Appraiser license. Case Number RE-14-64789.

LEJON, SAN V., sales agent, Salt Lake City, Utah. In a May 9, 2013 order following a hearing he was ordered to pay a \$250 civil penalty for failing to report a criminal charge within 10 days in violation of Utah Code § 61-2f-301(1)(a)(i). Case number RE-13-63888.

LEWIS, JOAQUINA, sales agent, Layton, Utah. In a June 13, 2013 order her license was granted and immediately suspended until she satisfies a fine owed to the Utah Department of Insurance. Case number RE-13-65625.

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LYBBERT, TROY, sales agent, Bountiful, Utah. In an April 22, 2013 order he was granted a license that was immediately suspended for a period of fifteen days for failing to disclose criminal history in the licensing application. Case number RE-13-64700.

MALAN, JADEN ROBERT, sales agent, Fruit Heights, Utah. In an April 25, 2013 order was granted a license on probation for criminal history. Case number RE-13-64804.

MARTIN, FREDDIE, sales agent, Lehi, Utah. In a March 26, 2013 order was granted a license on probation for past disciplinary actions on another professional license. Case number RE-13-64357.

MURPHY, JENNIFER, sales agent, Orem, Utah. In an April 24, 2013 order her license was suspended for a one month period for failing to disclose a recent criminal history in the licensing application. Case number RE-13-64797.

NELSON, KREG NEIL, sales agent, Salt Lake City, Utah. In an April 16, 2013 order his license was granted on probation for failing to satisfy civil judgments. Case number RE-13-64625.

PHILLIPS, JOSHUA, sales agent, Draper, Utah. In an April 4, 2013 order his license was granted, immediately suspended for a period of two months, and then placed on probation for criminal history. Case number RE-13-64459.

RICE, JAY R., sales agent, Holladay, Utah. In a January 18, 2013 order following a hearing his license was granted and immediately suspended until he satisfies the fines owed to the Utah Division of Securities. Case number RE-13-63216.

ROBERTS, SHELDON TORY, sales agent, South Jordan, Utah. In an April 3, 2013 order his license was granted and immediately suspended for a period of one month for failing to disclose criminal history in the licensing application. Case number RE-13-64457.

ROCK, JAMES, sales agent, Holladay, Utah. In an April 9, 2013 order he was granted a license that was immediately suspended for two months for failing to disclose criminal history in the licensing application. Case number RE-13-64516.

SAYES, JOSHUA, sales agent, Farmington, Utah. In an April 19, 2013 order following a hearing his license was granted on probation for criminal history and he was issued a \$1,000 for failing to disclose criminal history in the licensing application. Case number RE-13-63695.

SCHAFFRATH, JULIA, sales agent, Taylorsville, Utah. In a May 17, 2013 order her license was granted on probation for recent criminal history. Case number RE-13-65180.

SHURTLIFF, SHAUNNA, sales agent, Murray, Utah. In an April 25, 2013 order her license was granted on probation for criminal history. Case number RE-13-64800.

SKINNER, HEIDI L., sales agent, St. George, Utah. In a May 7, 2013 order her license was granted on probation for unresolved state tax liens. Case number RE-13-65011.

STEED, TROY, sales agent applicant, West Jordan, Utah. In a May 16, 2013 order his application for licensure was denied for criminal history. Case number RE-13-65174.

WARMSLEY, TAMMY, sales agent, Payson, Utah. In a May 14, 2013 order her license was placed on probation for recent criminal history. Case number RE-13-65140.

WILEY, BEAU K, sales agent, St. George, Utah. In a May 8, 2013 stipulation and order he was ordered to pay a \$1,000 civil penalty for failing to disclose criminal history in the licensing application. Case number RE-13-64889.

WILLIAMS, KELLI, sales agent applicant, Ogden, Utah. In a May 6, 2013 order her application for licensure was denied for criminal history. Case number RE-13-64995.

2013 Division CARAVAN

-Extraordinary Exchange of Information-

This year the Division CARAVAN went to five “repeat locations” (from the 2012 CARAVAN) to the communities of Park City, Logan, Moab, Richfield, and St. George. Four “new” CARAVAN locations were also attended in the cities of Vernal, Ogden, Tooele, and Cedar City. Each event was its own unique experience but there is no question that all nine occasions fostered a very productive and meaningful dialog and exchange of information.

Each three hour session included three forty-minute presentations from Jonathan Stewart, Division Director; Mark Fagergren, Licensing & Education Director; and Jeff Nielsen, Chief Investigator.

Director Stewart offered insight into Division Legislation - House Bill 290 introduced by Representative Gage Froerer (Principal Broker of Century 21 Gage Froerer & Associates). Highlights of significant changes in HB 290 as presented by Director Stewart are listed below:

Appraisal Management Companies:

A minor modification was made which extends the reinstatement period for expired appraisal management companies (from 30 days to one year).

Mortgage Industry:

Mortgage licensees home addresses provided to and maintained by the Division are not public information, unless no other address is provided.

The Division has been authorized to create administrative rules requiring periodic criminal background checks and credit checks.

Clarification that equivalent experience (experience obtained other than via exclusive origination experience) to become a lending manager will be created through rule.

Require all new Lending Managers to submit to a criminal background check.

And Clarification that a Principal Lending Manager cannot also act as a Branch Manager for the individual’s sponsoring entity, if the entity operates from more than one location.

Real Estate:

Clarify that licensing fees will be made in accordance with the Budgetary Procedures Act.

Establish when the Division may terminate an entity’s registration with the Division.

Clarify exemptions for property management activities.

Clarify who and when someone can sue when there is a commission or compensation dispute.

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Uniform Land Sales Practices:

Updated the Uniform Land sales Practices Act to be consistent with Dodd-Frank.

Director Stewart also discussed HB 54, although this piece of legislation was not Division legislation, it involves property tax and appraiser amendments which impact the tax appeal process and the industries the Division regulates. This legislation addresses the appointment of hearing officers and allows both appraisers and well as those who are not appraisers (if they are competent in real estate, finance, economics, public administration; or law) to be selected as hearing officers. After January 1, 2014 hearing officers must have completed a course that the tax commission develops. The hearing officer training course includes training in property valuation and administrative law.

Director Stewart shared information on the recently updated disclosure questions that licensees are currently being asked in conjunction with the renewal of their real estate licenses.

In conclusion Jonathan Stewart explained provisions of Senate Bill 77 and it's impact on the Division and on our licensees (pending minutes, approved minutes, public materials, and audio recordings of Commission and Board meetings) must now be posted on the state public notice website within specific abbreviated time requirements.

Mark Fagergren spoke about new property management rules. He contrasted the rules before property management regulations recently were enacted, and how these new rules will impact real estate brokerages, licensees, and unlicensed staff. He also discussed limitations on compensation paid to unlicensed personal assistants (UPAs) for both real estate and property management activities.

Unlicensed Personal Assistants (UPAs)

Real Estate Brokerage Activities

- Supervised by licensee/broker
- Clerical duties initiated by prospects
- At open house distribute literature only
- Act as a courier
- Place signs on properties
- Have keys made
- Obtain records
- Paid by predetermined rate (i.e. hourly)
- Referrals to non licensees (must be Unsolicited) up to \$150 (maximum)

Property Management Brokerage Activities

- * Supervised by broker
- * Provide prospective tenant access to unit(s)
- * Secretarial, bookkeeping, Maintenance, or rent collection services
- * Quote rent and lease Terms
- * Complete lease or rental Agreements
- * Unlicensed personal assistants up to \$200 per Lease for retaining or Securing a tenant

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Mr. Fagergren explained that under these new rules UPAs activities are limited or defined *by the service* (real estate or property management) *they are providing* and no longer by the type of brokerage *continued from page 18*

they work for (real estate or property management). An UPA could therefore perform both real estate and/or property management assistant duties (from the list of duties above) depending on which “hat” (real estate or property management) they were wearing in the performance of their unlicensed assistant duties.

The exception allowing UPAs to perform either real estate or property management personal assistant duties depending upon the “hat” they are wearing *does not apply* for personal assistants working for a property management company of a Dual broker. In this single instance UPAs are restricted to only performing the personal assistant duties for property management.

According to these new rules, principal and branch brokers are now responsible to implement training and supervision to ensure that UPAs are performing their duties in harmony with the newly passed property management rules.

Mr. Fagergren spoke about upgrades to the Division RELMS system including clarifying language on pending company affiliation changes, the inclusion of both current **and past** CE credits postings for real estate and appraiser licensees. He explained that now real estate and appraisal licensees have the ability to personally print their licenses at the time of license renewal, or at any time a licensee desires, from their personal RELMS account.

Mr. Fagergren discussed the recent findings of the Appraisal Subcommittee Audit of the Division, and he reminded all appraisers of the increases in appraiser licensing requirements that go into effect on 1/1/15.

He concluded by discussing the Mortgage Uniform State Exam and the 4/31/14 testing deadline. He discussed why the Division and Mortgage Regulatory Commission have currently elected NOT to adopt the uniform state test. He discussed call reporting and financial statement posting requirements and proposed continuing education rules changes that are under consideration for mortgage licensees.

Jeff Nielsen is the Chief Investigator for the Division. He began his presentation by discussing recently observed mortgage industry complaint trends. Common subjects of complaints involve: 1) Advertising Complaints including the failure to properly include the brokerage name in advertising on business cards, websites, and mailers. Another area of mortgage advertising abuse involves ads that *appear to be* from a government entity and often include inaccurate or misleading information. 2) Unlicensed Activity, and 3) Loan Modification Complaints. Many loan modification companies are illegally collecting upfront fees.

Mr. Nielsen next discussed appraisal complaint trends. Common appraisal complaint trends include:

- 1) Comparable Sales Disputes. Many home owners submit comparable sales that they *believe* better represent their home. Many of the submitted comparables are far from the subject

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property, or in a different neighborhood or market area. Sometimes these “comps” were in superior locations.

2) USPAP Violations. Most complaints submitted to the Division involve USPAP violations.

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These complaints are usually filed by other appraisers, reviewers, mortgage originators, or real estate agents. Some complaints are referrals from other government entities, such as HUD. Recent complaints include signing a certification without inspecting the property, not disclosing significant assistance from others, and a failure to analyze three year sale history (and listing history).

3) Complaints against AMCs for their failure to pay appraisers although a \$25,000 AMC bonding requirement should help to discourage this problem.

4) Errors in appraisal. Although many such mistakes appear somewhat minor in nature, they can be a USPAP violation. There are times when appraisers make significant mistakes in procedures or missing “portions of homes” in their analysis and reporting. Common problems include canned language, “cloned reports” and an overall “general sloppiness”

5) “Monster Homes”. These are comparatively large, unique, or complex homes. Appraisers often fail to recognize functional obsolescence and/or super adequacy of these properties. There are times when an appraiser would be better served to merely decline an assignment rather than attempt to appraise a property that is beyond their competency level. Other times inappropriate comps are selected (there may be times when an appraiser would appropriately need to expand their search boundaries in order to find comparable homes. Due to a properties complexity we occasionally see problems with the determination and use of appropriate recognized appraisal methods and techniques to appraise the home.

6) Competency. The Division sees competency issues increase depending upon the type of the property, somewhat unique market areas, certain geographic areas and once again improper methods. Remember when you accept an assignment, you are saying that you are competent to perform work in a particular area...this is your responsibility. Appraisers might need to associate with an appraiser that has the needed expertise. If nothing else...turn down the assignment if uncertain how to competently perform the work.

7) Other “housekeeping” issues. Failing to develop one of the recognized approaches to determining value when appropriate, not properly identifying the subject property as a manufactured home, or using the wrong form. Use of the incorrect appraisal form (i.e. use of a 1004 form for a non-financed property transaction.) Verbal statements of value to home owners (without creating and supplying supportive documentation in a work file). Not responding to home owners frustrated pleas for clarification or explanation. Not spending adequate time at a property. Remember a “low” appraisal is just as bad as a “high” appraisal.

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Jeff Nielsen reported that he is seeing an increase in the following complaint trends involving real estate:

- Advertising Violations (1/3 of all complaints received)
 - Blind ads (classified ads in KSL have had extensive misuses)
 - Not disclosing brokerage identification information
 - Disclosing brokerage info in font size that is too small (rules require the
 - brokerage name to be at minimum ½ the font size of the largest font size in the advertisement)
 - Failure to disclose owner/agent situations
- Ethics Complaints
 - Division only investigates complaints that involve a potential violation of Statutes and/or Rules
 - Boards of Realtors deal with Ethical complaints...Not the Division
 - Commission disputes are also generally Board member issues
- Property Management Complaints
 - Failure to return security deposits or mismanagement of fund issues
 - Lack of Knowledge
 - Sales agents without adequate knowledge about property management attempt to secure this kind of business
 - Failure to perform adequate tenant screening and background checks
 - New Property Management Rules (become aware of them)
- Unlicensed Activity
 - Many involve short sale negotiation situations
 - Misunderstood/misapplied statutory attorney licensing exception
 - Business sales involving real estate
 - Company and/or branch offices NOT registered with Division
- Agency Related Complaints
 - Failure to supervise
 - Non-disclosure of limited agency
 - Short sales situations involving designated agency
 - Owner/Agent issues

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- Fiduciary Duty Violations
 - Often found in short sale, property management and limited agency situations
- Various short-sale fraud allegations
 - Short Sale fraud scenarios (low-ball offers followed by subsequent “pocket buyer” for licensees to skim equity)
 - Agents only showing seller *some of* actual offers (fiduciary breach)
 - Agents showing limited agency offers to their seller, while competing company offers (for more money) not presented
 - Double contracts; not representing full terms of deal to lender
 - Sellers selling home to a “cooperating buyer”, Seller then renting back and subsequently purchasing from “cooperating buyer”
- Trust Account Irregularities
 - Situations involving brokers using trust account as an ATM
 - Employees stealing from the trust account
 - Broker still responsible
 - Employee using manipulated spreadsheets to hide their misappropriations
 - Broker failing to reconcile monthly
- Equity Skimming
 - Often seen with foreclosure and short sales
 - Example: Renting vacant home(s) and keeping rent money

The presentations were followed by a question and answer session by the three Division participants. Licensees were able to discuss issues and pose questions on a wide ranging number of important and timely issues.

Thanks to all attendees for your presence and participation in the 2013 Division CARAVAN!!!